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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date **MAY 19 2010**

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner's business is the development, manufacture, and marketing of specialty medical devices. It seeks to employ the beneficiary permanently in the United States as a computer systems analyst (EDI).¹ As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (the DOL), was secured by USCIS to accompany the petition.² Upon reviewing the petition, the director determined, *inter alia*, that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

With the petition, the petitioner had submitted, *inter alia*, the beneficiary's three-year Bachelor of Commerce degree and transcripts from years 1992, 1993, and 1994 as well as the beneficiary's provisional certificate and transcripts dated 1996 and 1997, concerning the beneficiary's Post Graduate Diploma.

On September 30, 2006, the director issued a Request for Evidence (RFE). Counsel submitted the following evidence on December 26, 2006:

- A credentials evaluation report dated November 17, 2006, by [REDACTED] of Upper Montclair, New Jersey. [REDACTED] acknowledged that the beneficiary attained a "3-year" Indian Bachelor's Degree and a Post Graduate Diploma in Management Information Systems and Computer Applications from Osmania University, India. According to [REDACTED], the beneficiary has the equivalent of a Bachelor's Degree in Computer Information Systems as awarded by a regionally accredited U.S. college or university.
- The beneficiary's Bachelor of Commerce Degree from Osmania University.
- The beneficiary's "Provisional Certificate and Consolidated Marks Memorandum" attesting that the beneficiary attained a Bachelor of Commerce (3 year degree). The AAO notes that there are no computer science or computer related courses stated on the marks memorandum.

¹ Electronic Data Interchange (EDI) is the inter-organizational, computer-to-computer exchange of business documentation in a standard machine-processable format. *See* http://russbellew.com/EDI_defined.aspx accessed may 10, 2010.

² On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089, replaced the Application for Alien Employment Certification, Form ETA 750. The new ETA Form 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004). The director secured the original labor certification from another case file.

- The beneficiary's "Provisional Certificate" from Osmania University stating that the beneficiary "passed the P.G. Diploma in MISCA" in April 1997.
- Four "Memorandum of Marks" statements from Osmania University stating that they were issued in regard to a "P.G. Diploma in MISCA I" term examination of April 1997. The first two memorandums list six courses: computer concepts and PC software, business data processing through Cobol, operations management, statistics for management information, management and information system, accounting and information system, and two "Labs, I and II," in PC software and Cobol. The third memorandum list four courses: object oriented programming with C++, a "Lab-V (C++)", "Major Project," and Viva-Voce, (Grade A and B). The fourth memorandum lists six courses and two labs: data and file structures, Unix and C, system analysis and design, software engineering, RDBMS, marketing and information system, Lab-III RDBMS (Practicals), and Lab-IV Unix and C (Practicals).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on February 27, 2006.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on November 21, 2006.

The proffered position's requirements are found on ETA Form 9089, Part H. This section of the Application for Alien Labor Certification, "Job Opportunity Information," describes the terms and conditions of the job offered.

On the ETA Form 9089, the "job offer" position description for a computer systems analyst (EDI) provides:

Will analyze client business requirements and negotiated agreements with Company for application to Company's automated order management system, specifically EDI (Electronic Data Interchange) to adapt and link Company's systems around the world with computer systems of clients who are typically hospitals. Ensure that clients have

³ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

appropriate level of access according to its business arrangement with Boston Scientific and ensure that order management system takes into account business practices of both Boston Science and client. Act as a liaison between Business Process Leaders and IT department and as technical liaison between Company customers and eCommerce department. Specific duties include: using EDI mapping and development and applying in-depth knowledge of UN/EDIFACT and ANSI.X12 to link Company's global computer systems with computer systems of clients to increase compatibility and share information; troubleshoot, research and resolve system issues, including the most complex technical issues raised by clients by working closely with Business Process Leaders and IT department; monitor daily eCommerce activities; process requests for enhancements and system modifications according to client business needs; work closely with new customers to set up EDI and to roll out new EDI transaction sets to existing customers; lead cross-functional teams from the Company's marketing, Materials Management Information System providers, IT departments and other business areas to address customer-related business or systems issues; respond to queries from internal and external customers; write/revise SOPs as needed; and determine configuration and set up multiple hospital ERP systems.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

H.4. Education: Minimum level required: Bachelor's.

4-B. Major Field Study: Computer Science or Management Information Systems.

5. Is training required in the job opportunity?

The petitioner listed "No" that training was not required in the job opportunity.

6. Is experience in the job offered required for the job?

The petitioner listed "Yes" that experience in the job offered was required for the job.

6-A. If Yes, number of months experience required;

24 [months]

7. Is there an alternate field of study that is acceptable?

The petitioner checked "No" to this question.

8. Is there an alternate combination of education and experience that is acceptable?

The petitioner checked "No" to this question.

9. Is a foreign educational equivalent acceptable?

The petitioner listed "Yes" that a foreign educational equivalent would be accepted.

10. Is experience in an alternative occupation acceptable?

The petitioner checked "Yes" to this question.

10.A. If yes, number of months experience in alternate occupation required:

24 [months]

10.B Identify the job title of the acceptable occupation.

"Systems analyst, software engineer."

14. Specific skills or other requirements:

Ability to conduct EDI mapping and development; proficiency with UN/EDIFACT standard; ability to configure and set up ERP systems; and ability to develop databases and write reports using ACCESS and various reporting tools.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As set forth above, the proffered position requires a Bachelor's Degree in Computer Science or Management Information Systems, and two years of experience in the job offered which is computer systems analyst (EDI), or two years in the related occupation of systems analyst, software engineer.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is a Bachelor's Degree in Management Information Systems in 1997, from the RBVRR Women's College, Osmania University, located in Hyderabad, India.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's credentials from Osmania University. It indicates that the beneficiary was awarded a Bachelor's of Commerce Degree in 1995, and a Post Graduate Diploma in Management Information Systems and Computer Applications in 1997, from that same university.

The director denied the petition on January 26, 2007. The director determined that the beneficiary does not have a U.S. Bachelor's Degree in Computer Science or Management Information Systems, or a single source foreign degree which is the equivalent of such a four-year U.S. bachelor's degree, based upon the evidence submitted.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submitted a legal brief dated February 22, 2007; a letter from counsel dated February 22, 2007; an explanatory statement entitled "History of Case;" a credentials evaluation dated February 16, 2007, from [REDACTED] and a credentials evaluation from The Trustforte Corporation dated September 11, 2000.

The DOL assigned the code of 15-1051.00 to the proffered position, computer systems analyst. The DOL's public online database at <<http://online.onetcenter.org/link/summary/15-1051.00>> (accessed May 7, 2010), provides a description of the position and requirements for the position most analogous to the petitioner's proffered position. The position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position.

The DOL assigns a standard vocational preparation (SVP) range of 7.0 to <8.0 to the occupation, which means that "Most of these occupations require a four-year bachelor's degree, but some do not." Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must compete four years of college and work for several years in accounting to be considered qualified.

The position requires four years of college culminating in a Bachelor's Degree in Computer Science or Management Information Systems and two years of experience, which is the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Because of the requirements of the proffered position and the DOL's standard occupational requirements, the proffered position is for a professional, but may also be considered under the skilled worker category.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The regulation at 8 C.F.R. 204(5)(1)(3)(ii)(B) states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The above regulation requires that the alien meet the requirements of the labor certification.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

On May 22, 2009, the AAO issued a RFE to seek documentation to determine the petitioner's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed to the DOL while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application.

In this request the AAO noted, *inter alia*, that there was no evidence in the record of proceeding that the beneficiary holds a four-year U.S. Bachelor's Degree in one of the required fields, e.g. Computer Science or Management Information Systems. The AAO also noted that the petitioner did not specify on the ETA Form 9089 that the minimum academic requirements of four years of college and a Bachelor's Degree might be met through a combination of lesser degrees and/or a quantifiable amount of work experience. The AAO further advised that according to the American Association of Collegiate Registrars and Admissions Officer's (AACRAO) EDGE database, a Bachelor's Degree in Commerce is equivalent to two to three years of undergraduate study in the United States and that

the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a single-source U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted.

In response to the AAO's RFE, counsel submitted an explanatory letter dated August 13, 2009, and a credentials evaluation report regarding the beneficiary's Provisional Certificate⁴ dated August 12, 2009, by [REDACTED] and additional evidence.

Further, the petitioner submitted a letter from counsel dated March 1, 2006; a "Perm Audit Folder Checklist;" a copy of the labor certification; the petitioner's "Recruitment Report" dated February 27, 2006; two "Prevailing Wage Request Forms;"⁵ and the following advertisements.

The petitioner's internal company posting notice stated in pertinent part:

Minimum qualifications:

Education – Bachelor's degree in Computer Science or Management Information System

Experience – 2 years as a systems analyst

The petitioner submitted copies of pages from the website <<http://boston.recruitmax.com> ...> accessed December 15, 2005, and December 29, 2005, which is entitled "Boston Scientific Job Profile" for "Job Code Title," Analyst II, EDI, that stated in pertinent part:

Minimum qualifications:

Education – Bachelor's degree in Computer Science or Management Information System

Experience – 2 years as a systems analyst

The petitioner submitted copies of pages from the job bank website <<http://web.detma.org> ...> accessed December 5, 2005, and January 4, 2006, placed by the petitioner for the job title "Computer Systems Analyst-EDI" that stated in pertinent part "Minimum qualifications: Bachelor's degree in

⁴ A third credentials evaluation dated August 12, 2009, was prepared by [REDACTED]. According to the evaluator, he had prepared the evaluation regarding the function of the Provisional Certificate at Osmania University. In summary, he stated that the Provisional Certificate is evidence of the beneficiary's completion of a post graduate degree at Osmania University.

⁵ In Block 11 of the Commonwealth of Massachusetts Prevailing Wage Request Forms, the offered job's educational requirements are 12 [years] "Pre College," 4 [years] College with the degree required, a Bachelor's Degree in Computer Science or Management Information Systems, no training required, two years job experience or two years experience in the related job systems analyst.

Computer Science or Management Information System plus 2 years as a systems analyst.”

The petitioner submitted copies of pages from the employment website <<http://jobs.boston.com> ...> accessed December 22, 2005, and January 5, 2006, placed by the petitioner for the job title “Computer Systems Analyst-EDI” that stated in pertinent part “Minimum requirements: Bachelor’s degree in Computer Science or Management Information System plus 2 years experience as a systems analyst.”

Additionally, the petitioner submitted two copies of newspaper advertisements from the Boston Sunday Globe dated December 18, and 25, 2005, that stated in pertinent part: “Min. req’s: bachelors in Comp. Sci. or MIS plus min of 2 yrs. or exp. as system s analyst.”

Finally, the petitioner submitted approximately six pages of its web site <<http://depts.inside.bsci.com> ...> accessed on January 3, 2006 that solicited candidates that may have wished to seek employment with the petitioner.

The AAO notes that the Commonwealth of Massachusetts Prevailing Wage Request Forms require a four-year college degree and each of the job advertisements described above require, as minimum requirements, a Bachelor’s Degree in Computer Science or Management Information System for the offered position.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority

to make the two determinations listed in section 212(a)(14).⁶ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d at 1012-1013.⁷

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

⁷ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at *17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA Form 9089 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the ETA Form 9089 does specify an equivalency to the requirement of a bachelor's degree.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1. Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate

that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to “examine the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification application form].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). It can be presumed that Congress’ narrow requirement of a “degree” for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning.” Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate “degree” and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require “a” degree that is the foreign equivalent of a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the RFE issued to the petitioner by this office, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁸ According to its website, www.aacrao.org, is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation

⁸ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at [www. Aacrao.org/publications/guide to creating international publications.pdf](http://www.Aacrao.org/publications/guide%20to%20creating%20international%20publications.pdf). If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

EDGE’s credential advice provides that a (3 year) Bachelor’s Degree “represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis.”

The evidence in the record of proceeding contains the beneficiary's diploma and examination marks record for a three-year Bachelor of Commerce degree from Osmania University. The record contains credential evaluations of the beneficiary's Bachelor's of Commerce Degree.

[REDACTED], credentials evaluation dated November 17, 2006, discusses the beneficiary’s post-secondary educational achievements which, according to the evaluator, include a one-year course of study at the “upper Bachelor’s Degree level” at Osmania University. According to the evaluator, the beneficiary received a Post Graduate Diploma in Management Information Systems and Computer Applications in 1997. The evaluator acknowledged that the post graduate program required for admission is the equivalent of a U. S. senior high school education plus a “3-year Indian Bachelor’s Degree.”

A supplemental evaluation dated February 16, 2007, was prepared by [REDACTED]. The report clarified its foreign equivalency evaluation above noted. On page two of the report, the evaluator re-affirmed that the beneficiary’s post graduate program required for admission the “equivalent of a U. S. senior high school, plus a 3-year Indian Bachelor’s Degree.” On page four of the report, the evaluator states “indeed Educated Choices combined the Indian bachelor’s degree with the Indian post-graduate diploma in determining the U.S. bachelor degree equivalence.”

However, the evaluator goes on in his 2007 report to opine, that instead of viewing the beneficiary’s total post-secondary education as a *combination* of lesser degrees leading to a U.S. four-year bachelor’s degree, the evaluator regards it is a four year *progressive* course of study, satisfying the requirements of the I-140 petition and the labor certification. The AAO notes that the evaluator does not expand or explain the differences between a combination of lesser degrees or a progressive course of study, which in this instance includes a 3-year Indian Bachelor’s Degree and a Post Graduate Diploma in Management Information Systems and Computer Applications in 1997.

[REDACTED] evaluator reports that some U.S. institutions of higher education will consider holders of three-year bachelor's degrees from India for entry into their master's degree programs. Counsel in his appeal brief contends that because the beneficiary has an Indian post graduate degree after a reputed 16 years of study, the beneficiary is qualified under AACRAO standards for U.S. admission for graduate placement as a master’s degree “where a bachelor degree would be typically

required.” Counsel’s assertion is misplaced since the equivalency of a master’s degree is not at issue here, nor does the evidence show that the beneficiary has 16 years of study. Rather, counsel is referring to the beneficiary’s work experience, which in the immigrant professional visa preference classification, cannot be utilized as it can in a non-immigrant work experience equivalency extrapolation. The regulations for the immigrant and non-immigrant are markedly different.

The equivalency of the beneficiary’s Bachelor’s of Commerce degree from the University of Osmania to a U.S. Bachelor’s Degree in Computer Science or Management Information Systems is also an issue. Overall, even assuming that the beneficiary’s degree could be considered equivalent to a U.S. bachelor’s degree, which it cannot (*see infra*), the record is utterly devoid of evidence supporting the evaluator’s conclusion that the beneficiary’s degree could reasonably be equated to a U.S. Computer Science or Management Information Systems Degree. The Educated Choices evaluations do not address whether those few U.S. institutions that accept three-year degrees from India do so subject to additional conditions, such as requiring the degree holder to complete extra credits prior to admission. Further, the fact that some U.S. graduate programs accept three-year degrees has little relevance to whether the beneficiary’s degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The beneficiary undertook a course of study that contained no computer science or management information systems subjects and received a Bachelor’s of Commerce Degree. Based upon the very detailed description of job duties recited in the labor certification, it is reasonable to assume that a commerce degree would not qualify the beneficiary for the offered position without further pertinent computer science or management information systems education. The beneficiary did go on to secure at least a portion of this education which is a two-years course of study and admittedly less than a four-year university course of study. The evaluator is silent how a commerce degree qualifies the beneficiary for the offered position of computer systems analyst (EDI), or how the beneficiary’s commerce degree includes Computer Science or Management Information Systems education.

The petitioner also submitted an earlier credentials evaluation from The Trustforte Corporation dated September 11, 2000. According to the report, the beneficiary completed a three-year course of study culminating in the award of a Bachelor of Commerce Degree from Osmania University in 1995.

The Trustforte evaluator discussed the beneficiary’s Post Graduate Diploma in Management Information Systems and Computer Applications received in 1997. According to the evaluator, the two years of computer science courses equates to “one year of academic studies leading to a bachelor of science Degree in Computer science from an accredited institution of higher education in the United States.” The evaluator then goes on to conclude because of the combination⁹ of these two

⁹ Where the analysis of the beneficiary’s credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the “equivalent” of a bachelor’s degree rather

degrees, commerce/management and computer science, that the beneficiary completed the equivalent of a Bachelor of Science Degree in computer information systems from an accredited institution of higher education in the U.S.

No evaluation submitted by the petitioner explained how the course content that comprised the beneficiary's university curriculum culminating in a Bachelor of Commerce degree is comparable or equivalent to the curriculum culminating in a U.S. Bachelor's Degree in Computer Science or Management Information Systems as required by the labor certification. As stated by the petitioner in the labor certification, no alternate field of study is acceptable. No evaluation submitted purports to be single source evaluation since every evaluator regards the beneficiary's Bachelor of Commerce Degree to be the first degree the beneficiary attained which is then followed by a post graduate degree.

The ETA Form 9089 does not provide that the minimum academic requirements of four years of college, a Bachelor's Degree in Computer Science or Management Information Systems and two years of experience in the job offered, might be met through three years of college or some other formula other than that explicitly stated on the ETA Form 9089. The copies of the notice(s) of Internet and newspaper advertisements, provided with the petitioner's response to the request for evidence issued by this office, fail to advise any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. The materials submitted in response to the AAO's RFE also fail to establish that the minimum qualification for the relevant position was actually a combination of degrees, i.e., a three-year bachelor's degree and a post-graduate diploma equated to a U.S. bachelor's degree, and not a single-source foreign equivalent degree. The advertisements submitted clearly state Bachelor's Degree in Computer Science or Management Information System plus 2 years experience as a systems analyst. Accordingly, as the beneficiary has not earned a U.S. bachelor's degree or foreign equivalent degree, the beneficiary does not qualify for the position certified in the ETA Form 9089 and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

Furthermore, it is noted that the beneficiary's post-graduate diploma from Osmania University does not qualify the beneficiary for the position certified in the ETA Form 9089. First, as noted above, the labor certification and supporting materials do not establish that one could qualify for the position by combining a three-year bachelor's degree with a post-graduate diploma which, when combined, is equated to a U.S. baccalaureate. Thus, even if it had been established that this combination of degrees constitutes the equivalent to a bachelor's degree, it has not been established that the labor certification permitted the combination of degrees or other educational and work experiences deemed equivalent to a U.S. degree.

Second, it has not been established that the post-graduate diploma from Osmania University, when combined with the beneficiary's three-year degree, could be considered equivalent to a U.S. bachelor's degree. As noted in the AAO's RFE, this office has reviewed the Electronic Database for Global Education (EDGE) created by the AACRAO. EDGE discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas,

than a single-source "foreign equivalent degree."

for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

In this matter, the credential evaluations do not contain any evidence establishing that the beneficiary's education may be equated to a U.S. Bachelor's Degree. It appears that, at most, a post graduate diploma could be combined with a three-year degree and be equated to a U.S. bachelor's degree based on multiple educational experiences and certifications, which does not meet the requirements of the labor certification. Once again, where expert opinions are not in accord with other information or are in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791.

Furthermore, the petitioner has not submitted any evidence that the beneficiary's post graduate diploma program required a three-year bachelor's degree for admission. The only evidence of accreditation or admission requirements were conclusory statements made in the credentials evaluations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

Skilled Worker Classification-section 203(b)(3)(A)(i) of the Act

An additional issue beyond the decision of the director is whether the beneficiary qualifies as a skilled worker under the terms of the labor certification.

The proffered position could also be properly analyzed as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience. Therefore, the AAO will also examine the petition under the skilled worker category, which requires a showing that the alien has two years of training or

experience and meets the specific education, training, and experience terms of the job offer on the alien labor certification application.

As already stated, Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The above regulation requires that the alien meet the requirements of the labor certification. Further, in the skilled worker category, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification “must be accompanied by evidence that the alien meets the educational, training or experience, and other requirements of the individual labor certification.” There is no such evidence in the record. The petitioner did not set forth any alternative education and experience requirements in Section H, Question 8, of ETA Form 9089. Additionally, the petitioner failed to designate in Section H, Question 14, that it would allow any alternate combination of education, and experience, and it stated in Section H, Question 5/5.A that training was not required in the job opportunity. The recruitment materials provided with the petitioner’s appeal are unhelpful in demonstrating the petitioner’s intent. There was no record submitted of the candidates, their resumes, the interview results, or why interviewed candidates were either rejected or employed by the petitioner.

Even if the petition qualified for skilled worker consideration, the beneficiary does not meet the terms of the labor certification, and the petition would be denied on that basis as well. See 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). While post secondary education may be included in the 2 years of training or experience required for consideration as a “skilled worker,” the terms of the labor certification here, as discussed above, require the receipt of a bachelor’s degree, which the beneficiary does not have. As a result, the beneficiary cannot be classified as a “skilled worker” under the terms of this labor certification.¹⁰

¹⁰ The DOL has provided the following field guidance: “When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job.” See Memo. from [REDACTED], U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). The DOL’s certification of job requirements stating that “a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer’s definition” and SESAs should “request the employer provide the specifics of what is meant when the word ‘equivalent’ is used.” See Ltr. From [REDACTED] U.S. Dept. of Labor’s Empl. & Training Administration, to [REDACTED] (March 9, 1993). The DOL has also stated that “[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree.” See Ltr. From

The AAO thus affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

[REDACTED], U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.